

change. That some obstructions were caused to the race at an early period, and, probably, while the rail road was being constructed, is apparent enough; but, that after it was completed and in operation, the property was permanently injured by it, is, I think, disproved by the weight of evidence. The evidence of Chandler, McKinsey and Kennedy, is strong against this claim. I can discover no reason for doubting their statements; and from the fact that they have been, one or the other of them, in possession and use of the mill property from 1841, their testimony is entitled to the greater weight. They could not be mistaken, and when, therefore, they say, that no injury was done to the property from 1841 to 1848, because of the change of the tail race, I am at a loss to discover upon what ground the court can come to a different conclusion.

The trunk spoken of in the testimony, by means of which the water is conducted across the race, and from the decay of which alone, any possible injury can be done to the property, costs so little, even if the owner or occupier of the mill property has to keep it in repair, or renew it from time to time, that I am persuaded it could have no influence upon its value. It would not cause it to rent for less, or impair its worth if put in the market for sale. I am therefore of opinion, that the credits claimed for further damages, which it is supposed the property has sustained by the change in the tail race, and for permanent depreciation by reason of such change cannot be allowed. The causes will now be sent to a special auditor, according to the understanding of the counsel during the argument, to ascertain the sum, if any, due Hall, in order that a final decree may be passed.

---

JAMES L. BARTOL, for the Complainant.

CORNELIUS McLEAN, for Defendant.